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| APPLICATION NO.                         | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/702,197                              | 11/05/2003  | Steve Ghertner       | 07006.1011          | 7103             |
| 35856                                   | 7590        | 05/12/2005           | EXAMINER            |                  |
| LAVA GROUP LAW BY SMITH & FROHWEIN, LLC |             |                      | FETSUGA, ROBERT M   |                  |
| P.O. BOX 88148                          |             |                      | ART UNIT            |                  |
| ATLANTA, GA 30356                       |             |                      | PAPER NUMBER        |                  |
|   |             |                      | 3751                |                  |

DATE MAILED: 05/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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|                              |                   |                 |  |
|------------------------------|-------------------|-----------------|--|
| <b>Office Action Summary</b> | Application No.   | Applicant(s)    |  |
|                              | 10/702,197        | GHERTNER ET AL. |  |
|                              | Examiner          | Art Unit        |  |
|                              | Robert M. Fetsuga | 3751            |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 April 2005.
- 2a) ☐ This action is **FINAL**.
- 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4, 22-32 and 39-43 is/are pending in the application.
- 4a) Of the above claim(s) 22-32 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 39-43 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 November 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) ☐ All    b) ☐ Some    \* c) ☐ None of:  
     1. ☐ Certified copies of the priority documents have been received.  
     2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
     3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
 \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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1. Applicant's election with traverse of Group I in the reply filed on April 07, 2005 is acknowledged. The traversal is on the ground(s) that the claimed inventions are not patentably distinct because claim 22 requires "determining" a fill time, and claims 1 and 39 include an element for which a fill time can be determined. This is not found persuasive because the new term "determining" in claim 22 is not defined in the instant disclosure. Presuming this term is equivalent to the previous recited "calculating" term (note claim 24 for example), such renders claim 22 distinct as applicant's acknowledged in the parent application. In any event, the inventions of claims 1 and 39, and claim 22, are not commensurate in scope. The differences recited are presumed patentably distinct as they are found in different claims. Otherwise, the application would include differently worded claims that encompass identical subject matter.

The requirement is still deemed proper and is therefore made FINAL. Accordingly, claims 22-32 are withdrawn from further consideration pursuant to 37 CFR 1.142(b).

2. The status of the parent application(s) should be updated.

3. The drawings are objected to because reference numeral "64" denotes different elements in Fig. 4. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the

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Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Proper antecedent basis for the "measure a standard fill time" subject matter set forth in claim 1, and

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"receive a standard fill time" subject matter set forth in claim 39, could not be found in the specification. Applicant is reminded claim terminology in mechanical cases should appear in the descriptive portion of the specification by reference to the drawing(s).

5. Claims 40-43 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 40 recites subject matter that is not found in the originally filed disclosure and is therefore considered to be new matter.

6. Claims 1-4 and 39-43 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claim 1 recites a timing module operable to "measure a standard fill time". Implementation of this subject matter is neither taught by the instant disclosure nor evident to the examiner. At page 8, lines 6-8, applicant discusses "internal

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electronic circuitry" which is capable of monitoring timing functions, but fails to teach one how a "standard" fill time is determined by such circuitry. Moreover, lines 1-3 on page 10 merely discuss "measuring the fill time" rather than measuring any standard fill time. Claim 39 is considered drawn to similar subject matter as the "standard fill time" is merely read from a memory after first being created by the timing module (pg. 10 lns. 7-12). Claim 40 recites an undefined "calibration mode".

7. Claims 1-4, 42 and 43 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claim 1 recites activating an alarm if a threshold time is both below and above a standard fill time. Implementation of this subject matter is neither taught by the instant disclosure nor evident to the examiner. The condition of an above standard fill time threshold would never arise as every flush of the toilet would trigger the lower threshold alarm.

8. Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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The claim is unclear as to whether the "reservoir" or "toilet" is intended to be part of the claimed combination since structure of the "apparatus" is defined as being connected thereto (ln. 4), but no positive structural antecedent basis therefor has been defined.

9. The claim hierarchy does not appear to be in accordance with MPEP 608.01(m). Claims remaining at allowance may require renumbering.

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 1-4 and 39-43, as best understood, are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative,

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under 35 U.S.C. 103(a) as obvious over applicant's admitted prior art.

Applicant's disclose at lines 8-11 of page 8, in the paragraph bridging pages 9 and 10, and at lines 3-5, 12 and 13 of page 10, that the claimed "water flow sensor" and "timing module" are known. Therefore, the claims, by merely reciting a module as "being operable(tive) to" perform certain functions, are anticipated by the applicant's admitted prior art disclosure since the known module apparently is capable of performing the recited function(s). Claim 4 can be considered drawn to the subcombination of the apparatus, analogous to claim 3. To the extent the sensor and module are not pre-coupled, to couple the known sensor with the known module would have been obvious in order to enable use as a water alarm system.

12. Claims 1-4, 39 and 40, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Lawson.

The Lawson reference discloses an apparatus comprising: a water flow sensor 100; and a timing module (Fig. 3) including a calibration mode (col. 5 lns. 34-54) and alarms 580,570, as claimed. Re claims 1-4, the Lawson apparatus is capable of being used with a toilet reservoir in the functionally recited manner.



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13. Claims 1-4 and 39-43, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Delgado Barri, Kulhavy and Duplessy.

The Delgado Barri reference (Figs. 4-6) discloses an apparatus comprising: a sensor 11-13; and a module 19 having an alarm 18. The Delgado Barri apparatus is associated with a toilet reservoir 23 (in the manner claimed) which would inherently include a "standard fill time". Moreover, the two different leaks discussed in lines 4-29 of column 3 would inherently occur at the relative times recited in the claims. Therefore, Delgado Barri teaches all claimed elements except for the standard fill time being measured.

Although the module of the Delgado Barri toilet apparatus does not include measuring the standard fill time, as claimed, attention is directed to the Kulhavy reference which discloses an analogous toilet apparatus which further includes a module (Fig. 2) which enables one to measure a standard fill time (col. 6 lns. 48-51). Therefore, in consideration of Kulhavy, it would have been obvious to one of ordinary skill in the toilet apparatus art to associate a measuring function with the Delgado Barri module in order to enable adjustment to different size tanks when a normal toilet operating condition is not indicated by the alarm (sentence bridging cols. 3-4). Furthermore,

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Duplessy teaches at lines 62-65 in column 4 that a toilet apparatus which activates an alarm upon every flushing (like in Delgado Barri) can be considered a nuisance.

14. Applicants' remarks in the letter filed November 05, 2003 have been fully considered but do not appear applicable to the current grounds of rejection.

15. Applicant is referred to MPEP 714.02 and 608.01(o) in responding to this Office action.

16. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 571/272-4886 who can be most easily reached Monday through Thursday.



Robert M. Fetsuga  
Primary Examiner  
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